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STATE OF WASHINGTON



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OFFICE OF  
INSURANCE COMMISSIONER

In the Matter Of:

Walter Nelson, d/b/a Walter  
D. Nelson Insurance Company

Licensee.

) No. D 98-72  
)  
) FINDINGS OF FACTS,  
) CONCLUSIONS OF LAW AND  
) ORDER ON HEARING  
)

TO: Walter D. Nelson  
Walter D. Insurance Company  
910 S. 40th Avenue  
Yakima, WA 98908

COPY TO: James K. Adams, Esq.  
Hurley, Lara & Adams  
411 North 2nd Street  
Yakima, WA 98901

AND TO: Deborah Senn, Insurance Commissioner  
Robert A. Harkins, Chief Deputy Commissioner, Consumer Protection Division  
William E. Frandsen, Deputy Commissioner, Consumer Protection Division  
Jeffery Coopersmith, Deputy Commissioner, Legal Affairs Division  
P.O. Box 40255  
Olympia, WA 98504-0255

Michael E. Grant, Assistant Attorney General  
Office of Attorney General  
P.O. Box 40100  
Olympia, WA 98504-0100

Pursuant to RCW 34.05, 48.04.010 and WAC 10-08 and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington on March 10, 1999. Pursuant to Chapter 34 RCW, all persons to be affected by the above-entitled matter were given the right to be present at such

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hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. Walter D. Nelson was represented by James K. Adams, Esq. of the Yakima law firm of Hurley, Lara & Adams. The Insurance Commissioner ("Commissioner") was represented by the Attorney General and Assistant Attorney General Michael E. Grant.

## NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order No. D 98-72 should be confirmed, set aside, or modified. Order No. D 98-72 ordered that the insurance agent's license of Walter D. Nelson should be revoked, for reasons specified therein.

## FINDINGS OF FACTS

Having considered the evidence and argument presented at the hearing, and the documents on file herein, the presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.
2. The Licensee is an individual who has held a life and health insurance agent's license in the state of Washington for well over 24 years, first as a salesman, then as a manager for Combined Insurance Company, then District Manager for Combined Insurance Company. Subsequent to these positions, for the last approximately 24 years, the Licensee has owned and operated a dba, Walter D. Nelson Insurance Agency, in Wapato, Washington. In addition to owning this insurance agency, the Licensee has in the past owned a video store ("M&A Video"). Currently, the Licensee owns and operates a computer/video arcade and a sports bar. Also, currently, the Licensee owns and leases a fairly significant amount of commercial real estate and leases this office space out to a variety of businesses including a funeral home, liquor store and food production business. He also currently owns large holdings of farmland and recreational property.
3. The Licensee's insurance agency represents approximately 60 insurance companies, selling auto (the majority of his business) and homeowners insurances along with various types of coverage for businesses, in both the standard and nonstandard markets. In Wapato, the Licensee's agency sells the most insurance of any individual agent. He has approximately 10,000 policyholder customers and sells approximately \$3,000,000 in premiums annually.

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4. A large portion of the Licensee's customers are Hispanic or Native American, and are farm laborers. Many of these individuals have limited skills with the English language and, for reasons of custom or for other reasons, do not use checking accounts.

5. From September 22, 1997 until October 2, 1997, the Insurance Commissioner conducted an audit of the Walter D. Nelson Insurance Agency. This audit was not commenced due to any inquiry or complaint filed with the Commissioner, but rather the Walter D. Nelson Insurance Agency's name was selected by the Commissioner's examiner at random out of the yellow pages of the telephone book. At that time there were, and have since been, no inquiries or complaints against the Licensee filed with the Commissioner.

6. First, as a basis of her Order Revoking License, the Commissioner has alleged, the Licensee at hearing admitted, and it is here found, that the Licensee charged Dora Lopez and Juan Lopez more than the premium for insurance policies and more than he reflected in the receipts he gave them. Specifically, the Licensee charged Dora and Juan Lopez \$2.00 more than the actual premium due and failed to reflect this \$2.00 charge in the receipts he gave them. Although these Findings only apply to Dora and Juan Lopez as they were the only consumers alluded to in the subject Order Revoking License or testified to specifically at the hearing, Licensee admits that he had a practice of charging this \$2.00 extra fee only to those consumers who preferred to come into his agency to pay cash for their premiums. The majority of these customers were Hispanic, had limited skills in reading and writing English and because they did not have checking accounts would otherwise have had to purchase a money order from a bank to mail the premium funds to the insurance company. Therefore, the Licensee charged those customers who preferred to come to his agency and pay cash a \$2.00 service fee for collecting their cash and writing a check himself to send to the insurance company or to wire the funds to the insurance company. This fee was charged for renewal policies only, not for payment of premiums for new policies and not for non-direct bill policies. Further, the customers were told that this service, with the fee, was optional. The fee was not a condition of obtaining the insurance.

7: Second, as a basis of her Order Revoking License, the Commissioner has alleged, the Licensee admits, and it is here found that the Licensee deposited premium money into the Licensee's M&A Video account, which was an account which was not the Licensee's separate premium account.

8. The Licensee in the past owned M&A Video, a video rental store. For this business, he maintained a Key Bank account, entitled "M&A Video account," which was located near his insurance agency in Wapato. The Licensee maintained his separate insurance premium account, however, with Home Security Bank in Sunnyside due to a longstanding relationship with Russ Arbuckle, its Executive Vice President (see testimony of Russ Arbuckle). Because the nearest Home Security Bank to the Licensee's agency was located in Sunnyside, some 50 miles round trip from the Licensee's agency, for his convenience the Licensee deposited the cash he received for

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premiums into the nearby M&A Video account. The Licensee then immediately wrote a check drawn on the M&A Video account representing the exact amount of these cash premiums, made payable to the Walter D. Nelson Insurance Agency, then deposited these checks by mail or in person into his separate premium account in Sunnyside. From his separate premium account, the Licensee then paid the appropriate premiums to the insurance companies involved, either by mail or electronically. There is no evidence that any funds were diverted from the M&A Video account for any other purpose or that it had a negative balance at any time.

9. Third, in support of her Order Revoking License, the Commissioner has alleged, the Licensee at hearing admitted, and it is here found, that the Licensee's separate premium account had a negative balance at the end of each month for most or all months from January 1996 through September 1997. The only sufficient evidence presented at hearing as causing these overdrafts were that they were caused by the fact that the Licensee's payments to the appropriate insurance companies for clients' premiums took place often electronically and therefore were deducted from the Licensee's separate premium account prior to deposit of these premium funds being transferred from the M&A Video account into the separate premium account. Further, the Licensee admitted and it is here found that the Licensee did withdraw funds from his separate premium account for operating costs related to his insurance agency. However the testimony showed (testimony of Russ Arbuckle) that in each case any overdraft was covered by the bank. Further, no consumer was left with his or her premiums unpaid or otherwise harmed.

10. There is insufficient evidence that the Licensee withdrew funds from this separate premium account for any purpose other than for payment of premiums to insurance companies and to cover operating expenses for his agency. The Licensee acknowledges that withdraw of funds from his separate premium account is not permitted under applicable rules.

11. Following the subject audit, the Commissioner's examiner and the Licensee's wife, also an insurance agency operating in Walter D. Nelson Insurance Agency, went over the problems discovered in the agency and set out a procedure of operation which would comply with applicable laws and bring the agency's operations into compliance with applicable rules. This change of procedure took place in September and October 1997 and included no longer charging the \$2.00 extra fee outlined above, and complying with the applicable separate premium account rules. In the approximately 13 months between the commencement of the change of procedure and the entry of the Order Revoking License herein, and in the period up until the present time, there is no evidence that the Licensee has not complied with the new procedure and there have been no complaints or other concerns raised with regard to the Licensee's insurance or other operations.

12. The testimony presented by the Licensee, which included various city officials and also peers in the insurance business, showed, and it was undisputed, that the Licensee is an involved public citizen of high integrity and that at all pertinent times the Licensee was financially solvent and

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maintained good credit. Indeed, in her closing argument, the Commissioner acknowledged, that there is "no question of the Licensee's integrity, honesty or fine character."

13. The Insurance Commissioner presented Insurance Examiner Mary Selvig as the witness in her behalf along with numerous written documents which were duly admitted into evidence. This witness presented detailed testimony in a clear and credible manner and exhibited no particular biases. Her testimony did not conflict in any significant way with the testimony of any other witness at hearing or from any of the written evidence.

14. The Licensee presented himself and his wife, agent Jean Marie Nelson in person. Russ Arbuckle, Thomas E. Kehm, Harold MacLean, Duane Groth and Don Lane appeared as telephonic witnesses on the Licensee's behalf. Each of these witnesses presented his or her testimony in a clear and credible manner and exhibited no particular biases. Their testimony did not conflict in any significant way from each other or from the testimony or written evidence presented by the Licensee.

15. By his activities in regard to the Dora Lopez and Juan Lopez matter, the Licensee charged consumers \$2.00 more than the premium for insurance policies and more than he reflected in the receipts he gave them.

16. By his activities in regard to using the M&A Video account to deposit his cash premiums, then writing a check back to his agency then depositing this check into his separate premium account from which he paid premiums, the Licensee deposited premium money into an account other than the separate premium account required.

17. By his activities in regard to withdrawing funds to cover operating expenses from his separate premium account, the Licensee has violated applicable rules relating to separate premium accounts.

18. By his activities in regard to charging the \$2.00 extra fee, and in depositing premium money into his M&A Video account rather than directly into his separate premium account, and in using funds in his separate premium account for operating expenses and in allowing overdrafts to occur in his premium account, the Licensee has knowingly participated in the violation of the Insurance Code or proper orders or regulations of the Commissioner. Given the sum of the evidence presented, however, it cannot be found that the Licensee has by these activities shown himself to be incompetent or untrustworthy or a source of injury and loss to the public.

19. It should be noted that the Licensee has had an Order Assessing Penalties against him in the amount of \$1,000. in 1977 (D77-24) and a Stipulation and Order Levying a Fine of \$500 entered against him in 1987 for \$500. (D 87-5) and again in 1987 (D 87-63) for \$500. While none of these actions are directly related to the types of violations at issue herein, they do evidence, as

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here, a failure of the Licensee to be scrupulous in the handling of his insurance agency's handling of its finances and records.

20. At hearing, the Commissioner stated that she has presented no argument to contest the Licensee's good reputation for integrity, honesty or fine character, and that the only issue is the sanction which should be imposed upon the Licensee. Indeed, while the Commissioner's allegations are valid and pertinent to the Licensee insofar as the violations could have been prevented had the Licensee been more vigilant over his business operations, the uniqueness of this situation must also be considered, specifically the unique needs and customs of the Hispanic culture which he serves and the distances between financial institutions he used. This is not to excuse the Licensee, but it is the opinion of the undersigned that, based upon the totality of evidence presented during hearing and given the fact that the Licensee has corrected each and every violation found by the Commissioner, the fact that no consumer has been harmed or even complained, that the Licensee has operated this particular agency for 24 years and been an agent for far more years than 24 and that the integrity and honesty of the Licensee is not in question, the penalty of revocation as the sanction is overly burdensome.

21. Given the circumstances found in the facts above, it is reasonable that the Insurance Commissioner's Order Revoking License, No. D 98-72, should be modified to impose instead a suspension of the insurance agent's license of Walter D. Nelson for a period for a period of six months from the date of entry of this Order, together with a fine of \$2,000.

#### CONCLUSIONS OF LAW

1. By his activities in charging consumers \$2.00 more than the premium for insurance policies and more than he reflected in the receipts he gave them, the Licensee violated RCW 48.18.170 and RCW 48.18.180.
2. By his activities in depositing premium money into his M&A Video account, which was not his separate premium account, the Licensee violated RCW 48.17.600 and WAC 284-12-080.
3. By using funds in his separate premium account for purposes other than permitted, the Licensee violated RCW 48.17.600 and WAC 284-12-080.
4. The conduct found above constitutes knowing participation in the violation of the Insurance Code or proper orders or regulations of the Commissioner within the meaning of RCW 48.17.530(1)(b).
5. Pursuant to RCW 48.17.530(1)(b), the Insurance Commissioner's Order Revoking License, No. D 98-72, should be modified to instead impose a suspension of the Licensee's insurance agent's license for a period of six months from the date of entry of this Order

together with a fine of \$ 2,000.

6. The Findings of Facts, Conclusions of Law and Order herein, along with the previous orders entered against him and referred to above should be considered in any future new disciplinary action, involving new allegations, against Walter D. Nelson.

#### ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensee, Walter D. Nelson, 1) charged consumers \$2.00 more than the premium for insurance policies, and more than he reflected in the receipts he gave them; 2) deposited premium money into an account other than the separate premium account required by RCW 48.17.600 and WAC 284-12-080; and 3) used funds in his separate premium account to pay some operating expenses which is in violation of RCW 48.17.600 and WAC 284-12-080; and 4) has knowingly participated in the violation of the Insurance Code or proper orders or regulations of the Commissioner within the meaning of RCW 48.17.530(1)(b), and to the effect that the Commissioner's Order Revoking License of Walter D. Nelson should be reduced to instead impose a suspension of his license for a period of six months from the date of entry of this Order and a \$2,000 fine imposed;

IT IS HEREBY ORDERED that the Insurance Commissioner's Order No. D 98-72 that the insurance agent's license of Walter D. Nelson be revoked is reduced to instead impose a suspension of his individual insurance agent's license for a period of six months from the date of entry of this Order and the Licensee shall pay a \$2,000 fine within 20 days of the date of this Order.

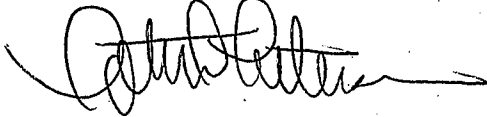
IT IS FURTHER ORDERED that the Findings of Facts, Conclusions of Law and Order herein, and the previous orders imposed against this Licensee referenced above, shall be considered in any future new disciplinary action - involving new allegations - against Walter D. Nelson.

IT IS FURTHER ORDERED that the Licensee, Walter D. Nelson, surrender his insurance agent's license to the Commissioner immediately and it shall remain so surrendered for six months from the date of entry of this Order.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210, RCW 48.04.010, RCW 48.17.530, 48.18.170, 48.18.180, 48.17.600 and WAC 284-12-080.

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This Order is entered at Olympia, Washington, this 8th day of June, 1999.

A handwritten signature in black ink, appearing to read 'Patricia D. Petersen', with a long horizontal flourish extending to the right.

PATRICIA D. PETERSEN  
Chief Hearing Officer and Presiding Officer